

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

THE CHARTER OAK FIRE INSURANCE
COMPANY

Plaintiff,

against

ALPHA OMEGA REALTY LLC, ALPHA
OMEGA BUILDING CONSULTING CORP.
and ANTHONY FRASCOME

Defendants.

Case No. 22-CV-00815

COMPLAINT

Plaintiff, The Charter Oak Fire Insurance Company (“Charter Oak”), by their attorneys Bond, Schoeneck and King PLLC, as and for its complaint allege as follows:

Parties, Jurisdiction and Venue

1. Charter Oak is a corporation duly organized under the laws of the state of Connecticut with its principal place of business in Hartford, Connecticut.
2. Upon information and belief, the defendant Alpha Omega Realty LLC (“Alpha Omega Realty”) is a limited liability corporation organized under the laws of the state of New York, all of whose members are residents of New York, with a principal place of business in Spring Valley, New York.
3. Upon information and belief, the defendant Alpha Omega Building Consulting Corp. (“Alpha Omega Building”) is a corporation organized under the laws of the state of New York with a principal place of business in Congers, New York.
4. Upon information and belief, the defendant Anthony Frascone (“Frascone”) is an individual and principal of Alpha Omega with a residence in Congers, New York.

5. The amount in controversy exceeds the sum of \$75,000.00 exclusive of interest in costs. This court has jurisdiction over this action pursuant to 28 U.S.C. §1332 in that there is a diversity of citizenship between the parties.

6. Venue is proper pursuant to 28 U.S.C. §1391(c).

Statement of Facts

7. Charter Oak issued to Alpha Omega Realty a Workers Compensation and Employer Liability and Insurance Policy No. UB-9H263303-16-42-G for the policy period November 14, 2016 and November 14, 2017 ("the policy"). On its application for the policy Alpha Omega and Frascone represented that the business of Alpha Omega was a real estate office with a single employee.

8. In truth and in fact, Alpha Omega Realty and Alpha Omega Building and Frascone were operating a business that performed general contracting and multilevel building construction projects in the New York area with over 90 employees each of which utilized the Policy for Workers Compensation Insurance.

9. Pursuant to the policy between Charter Oak and Alpha Omega, Alpha Omega agreed to pay to Charter Oak a premium for the policy. Pursuant to the policy between Alpha Omega and Charter Oak, Alpha Omega's premium may be based on estimates, subject to computation by final actual premium when complete information about Alpha Omega's actual exposure was available.

COUNT ONE - BREACH OF CONTRACT

10. Plaintiff Charter Oak, repeats and realleges the allegations of paragraph 1 thru 8, as fully set forth herein.

11. Travelers Casualty has duly performed all the conditions the policy on its part. Charter Oak has conducted audits of Alpha Omega based on information provided by third parties which has resulted in charges of \$1,498,748.00 for premiums for the Charter Oak policy.

12. The policy provides for a final premium to be determined by using actual premium basis and the proper classifications and rates that apply to the business and work covered by the policy.

13. The policy requires Alpha Omega to pay the final premium if it is more than the premium paid.

14. The policy remained in full force and effect through the date of termination and Charter Oak fully performed all terms and conditions of the policy and Alpha Omega received the benefit thereof.

15. Alpha Omega has materially breached the contract of insurance and has failed and neglected to perform the conditions of that contract on its part in misrepresenting the nature of the work covered by the policy and in failing to pay Charter Oak the sum due and owing for premiums under the policy.

16. By reason of the foregoing Charter Oak has been damaged in the total amount of \$1,498,748.00.

COUNT TWO – QUANTUM MERUIT

17. Plaintiff Charter Oak repeats and realleges the allegations of paragraph 1 thru 15 as fully set forth herein.

18. From on or about November 14, 2016, to November 14, 2017, Charter Oak provided insurance coverage and other beneficial services to Alpha Omega Realty and Alpha Omega Building. Said services among others included providing insurance coverage pursuant to policies of insurances and handling investigating claims.

19. Alpha Omega Realty and Alpha Omega Building has received the value of the insurance coverage thus provided and agreed to pay for same.

20. The reasonable value of the insurance coverage thus provided and not paid for is \$1,498,748.00.

COUNT THREE - FRAUD

1. Charter Oak repeats and realleges the allegations of paragraphs 1 through 19 as normally set forth herein.

2. On November 23, 2016, Alpha Omega Realty and Frascone through its agent made application to Charter Oak for a policy of Workers Compensation and Employer Liability Insurance on behalf of both Alpha Omega Realty and Alpha Omega Building.

3. In that application Alpha Omega Realty, Alpha Omega Building and Frascone represented Alpha Omega Realty was a real estate business with a single employee with minimal workers compensation payroll.

4. In truth the application was intended to provide insurance coverage for both Alpha Omega Realty and Alpha Omega Building and was submitted on behalf of both entities.

5. In the application, Alpha Omega Realty, Alpha Omega Building and Frascone represented that the information contained in the application was true and accurate.

6. Charter Oak relied on the representations made by Alpha Omega Realty and Alpha Omega Building and Frascone in issuing the policy of insurance and the calculation of premium.

7. At the time the representations on the application were made, Alpha Omega Realty, Alpha Omega Building and Frascone knew the representations were false and did so with the intent of fraudulently inducing Charter Oak to issue its policy of insurance at a reduced and inaccurate premium amount.

8. By virtue of the false and fraudulent representations of Alpha Omega Realty, Alpha Omega Building and Frascone, Charter Oak has been damaged in the amount of \$1,498,748.00.

WHEREFORE plaintiff demands judgment against each defendant jointly and severally as follows:

1. On the first count compensatory damages in the amount of \$1,498,748.00.
2. On the second count compensatory damages in the amount of \$1,498,748.00.
3. On the third count compensatory damages in the amount of \$1,498,748.00

together with punitive damages.

4. Awarding plaintiff's attorneys fees, costs and disbursement of this action.
5. Awarding plaintiff such other further and different relief as this court may seem

just and proper.

Dated: New York, New York
January 31, 2022

BOND, SCHOENECK & KING PLLC

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